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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,892	06/29/2001	Kay Lichtenwalter	1094560-3	3390

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AGILENT TECHNOLOGIES, INC.  
Legal Department, DL429  
Intellectual Property Administration  
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EXAMINER

CHIN, CHRISTOPHER L

ART UNIT PAPER NUMBER

1641

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/895,892

Applicant(s)

LICHTENWALTER, KAY

Examiner

Christopher L. Chin

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 38, 45 and 47-55 is/are pending in the application.
- 4a) Of the above claim(s) 50 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51-55 is/are allowed.
- 6) ☒ Claim(s) 38 and 49 is/are rejected.
- 7) ☒ Claim(s) 45, 47, and 48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 38 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al in view of Eriksson.

Brown et al (US Patent 5,807,522) discloses a method of forming a microarray of analyte-assay regions on a solid support, wherein each region in the array has a known amount of a selected, analyte specific reagent. The method involves first loading a solution of a selected analyte-specific reagent in a reagent-dispensing device having an elongate capillary channel (i) forming by spaced-apart, coextensive elongate members, (ii) adapted to hold a quantity of the reagent solution and (iii) having a tip region in which aqueous solution in the channel forms a meniscus. The channel is preferably formed by a pair of spaced-apart tapered elements (col. 3, lines 23-34). The microarray is formed on a surface of a substrate. The microarray has at least  $10^3$  distinct polynucleotide or polypeptide biopolymers in a surface area of less than about  $1 \text{ cm}^2$ . Each distinct biopolymer (i) is disposed at a separate, defined position in the array, (ii) has a length of at least 50 subunits, and (iii) is present in a defined amount between about 0.1 femtomoles and 100 nanomoles. The surface is a glass slide surface coated with a polycationic polymer, such as polylysine, and the biopolymers are polynucleotides (col. 4, lines 16-24). The distinct biopolymers in each region are distinct

Art Unit: 1641

in terms of being different biopolymer sequences, and/or different concentrations of the same or distinct biopolymers and/or different mixtures of distinct or different-concentration biopolymers. Thus, an array of "distinct polynucleotides" means an array containing, as its members, (i) distinct polynucleotides, which may have a defined amount in each member, (ii) different, graded concentrations of given-sequence polynucleotides, and/or (iii) different-composition mixtures of two or more distinct polynucleotides (col. 6, lines 46-58). After the analyte specific reagent is applied to each region of the array, the array is treated to evaporate the liquid of each droplet of reagent applied to the array to leave a desired array of dried, relatively flat regions. The drying may be done by heating or under vacuum (col. 9, lines 30-45).

Brown et al differs from the instant invention in failing to teach placing the array in a waterproof storage container.

Eriksson (US Patent 3,642,450) discloses a waterproof envelope for holding a test strip.

It would have been obvious to one of ordinary skill in the art to enclose the microarray of Brown et al in the waterproof envelope of Eriksson because the waterproof envelope of Eriksson provides the advantage of protecting the reagents on the microarray from contaminants.

3. Applicant's arguments with respect to claims 38 and 49 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 1641

***Allowable Subject Matter***

4. Claims 45, 47, and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claims 51-55 are allowed.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher L. Chin whose telephone number is (571) 272-0815. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/895,892

Page 5

Art Unit: 1641

A handwritten signature in cursive script that reads "Christopher L. Chin".

Christopher L. Chin  
Primary Examiner  
Art Unit 1641

10/29/05